



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

HD:hd
Docket No: 05454-99
11 February 2000

L [REDACTED] USNR RET
[REDACTED]
[REDACTED]

Dear Lieutenant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 February 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Navy Personnel Command dated 16 November 1999 and the Memorandum for the Record dated 2 February 2000, copies of which are attached. The Board also considered your counsel's letter dated 15 December 1999 with enclosures.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. The Board found, in light of the memorandum for the record, that the officer you assert was age 60 when the Fiscal Year 96 Navy Reserve Line Lieutenant Commander Selection Board considered him on 19 June 1995, actually was well below that age. Finally, the Board was unable to find you received erroneous advice about your retirement options. Specifically, they were unable to find you were advised that applying for the Reserve Transition Benefits Program was your only option. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is

important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure

Copy to:

Ms. [REDACTED]



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

5420
PERS-86
16 Nov 99

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL RECORDS

Via: Assistant for FCNR Matters (PERS-00ZCB)

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF
LIEUTENANT [REDACTED] USNR, RET, [REDACTED]

Encl: (1) BCNR File 05454-99 w/Service Record

1. We are returning enclosure (1) with the following observations and the recommendation that relief in LT [REDACTED] case be denied.
2. LT [REDACTED] has not signed the petition, or provided documentation that the person signing the petition is authorized to act in his behalf. Presuming, though, that enclosure (1) accurately presents [REDACTED]'s desires, in order to expedite the administrative process, we prepare an advisory opinion in the event it is proper to proceed.
3. LT [REDACTED] requests a 'directed promotion' and if not possible, reinstatement in the Ready Reserve, so that he may continue to earn retirement points.
4. LT [REDACTED]'s petition is based on assertions, essentially, that the boards that considered him for promotion acted in error in that:
 - a. The boards did not select the best qualified officer;
 - b. The boards may have selected an ineligible officer;
 - c. That the boards discriminated on the basis of age.
5. He further asserts that he received erroneous advice concerning his retirement options.
6. LT [REDACTED] was properly considered by the FY-95 and FY-96 Naval Reserve Lieutenant Commander promotion selection boards and was not selected. He communicated in writing with the selection boards. Specific reasons for [REDACTED]'s non-selection are not available since board deliberations are sensitive in nature and records of deliberations are not kept.

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LIEUTENANT [REDACTED] USNR, RET [REDACTED]

7. In forming our recommendation, we address each of the issues raised in the petition.

a. Best qualified; [REDACTED] mere assertion that his record was outstanding, and thorough redaction of his record, without substantiation that the board acted in error, are not sufficient to establish the basis for a decision in his favor.

b. Ineligible officer: The officer identified was properly considered by the board, and was routinely promoted when due, and retired after serving successfully in the higher grade.

c. Age. The board in both cases selected officers that were older than [REDACTED]. The Navy Inspector General reviewed the case and determined there was no merit to [REDACTED] claim.

d. Improper advice. This issue is beyond the purview of this office except to note that [REDACTED] retired more than two months after receiving the letter from PERS-9 outlining various options in his case.

8. There is no provision in Title 10 USC for a 'directed promotion' as per § 14108(c) board recommendation is required. We defer to PERS-91 for opinion regarding the drilling status.

9. LT [REDACTED] can be justifiably proud of his record and contributions; this negative response to his petition does not detract from his honorable service to this nation and the United States Navy.

[REDACTED]
Director, Reserve Officer
Promotions, Appointments, and
Enlisted Advancement Division

2 February 2000

MEMO FOR THE RECORD

Re: Case of [REDACTED] USNR (Ret), [REDACTED]

PERS-86 (S) [REDACTED] advises this date that [REDACTED] Willis was considered by the FY 96 Naval Reserve Line LCDR Sel Bd convened on 19 Jun 95, but that his date of birth is 8 Nov 37, so he was well below age 60 when the promotion board considered him.

[REDACTED]
[REDACTED]
Head, Performance Section